

BEFORE THE GOVERNING BOARD OF THE  
OAKLAND UNIFIED SCHOOL DISTRICT  
COUNTY OF ALAMEDA

In the Matter of the Accusation Against:

CERTAIN CERTIFICATED EMPLOYEES,  
  
Respondents.

OAH No. 2011030787

**PROPOSED DECISION**

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on April 25, 2011.

Marion L. McWilliams, Deputy General Counsel, Oakland Unified School District, and Heather Robert Coffman, Attorney at Law, Ruiz & Sperow LLP, represented complainant Anthony Smith, Superintendent, Oakland Unified School District.

Robert D. Links, Attorney at Law, Slote & Links, represented respondents Rachel Campbell-Uthman, Ann Kruze, Jennifer Lutzenberger, Benjamin Schmookler, and Karen Todd, all of whom are members of United Administrators Oakland Schools.

There was no appearance by or on behalf of respondents Nancy Altman, Laima Haider, Cathrine Kuchera, Miles Murray, Kathryn Ruggiero, Mary Schneider, or Jessica Wan.

Sarah Sandford-Smith, Attorney at Law, Beeson Tayer & Bodine, represented all remaining respondents.

The record closed and the matter was submitted on April 25, 2011. The record was reopened on April 29, 2011, upon the order of the administrative law judge to allow the submission of additional evidence on jurisdictional matters. The district's letter brief dated May 2, 2011, and the attachments thereto, was marked Exhibit 14 and admitted. A letter from David Weintraub, Attorney at Law, Beeson Tayer & Bodine, dated May 3, was marked Exhibit C and admitted. The record was closed again on May 3, 2011, and the matter was deemed resubmitted on that date.

**FACTUAL FINDINGS**

1. Complainant Anthony Smith issued in the accusation in his official capacity as superintendent of the Oakland Unified School District (district).

2. Respondents are certificated employees of the district. The respondents are identified on Appendix A, attached hereto and incorporated herein by this reference.

3. On March 9, 2011, the district's governing board adopted Resolution No. 1011-0142, in which it resolved to reduce or discontinue particular kinds of services for the 2011-2012 school year, and directed the superintendent to give notice to certificated employees that their services would be reduced or eliminated at the end of the 2010-2011 school year. The resolution called for a 510.4 FTE (full-time equivalent) reduction in particular kinds of services and, in addition, called for the elimination of all kindergarten through 12th grade courses not accessible to English Language Learners, which would have resulted in the further elimination of 28 FTE.

4. On April 20, 2011, the governing board adopted Resolution No. 1011-0142A. This resolution amended Resolution No. 1011-0142 by reducing, from 538.4 FTE to 95.2 FTE, the services to be reduced or eliminated, as follows:

<b>POSITION/ AREA OF SERVICE:</b>	<b>FTE</b>
Adult Education Counselor	2.0
Adult Education Teachers	46.0
K-5 Multi-subject Teachers	0
6 <sup>th</sup> Grade Core Teachers	3.0
School Psychologists	3.8
Counselors	5.0
English	0
Social Science	5.0
Drama	0
Music	1.0
Art	0
Librarians	.6
Social Workers	.4
Physical Education	0
French (as a foreign language)	1.0
German (as a foreign language)	0
Spanish (as a foreign language)	1.0
Mandarin (as a foreign language)	0
Business/ Computers	0
ROP Computers	3.2
ROP Art Digital Film/ Video Production	.8
ROP Architecture Design/ Drafting/ Geometry	1.0
ROP Construction Tech	.6
ROP Graphic Arts/ Graphic Design	2.6
ROP Radio/ TV Technology Production	1.0
ROP Legal Occupations	.6
ROP Fashion Design	.4

ROP Urban Design	.2
Community Day Middle School teachers	4.0
<b>TOTAL FTE REDUCTION</b>	<b>83.20</b>

Resolution No. 1011-0142A also calls for the elimination of all kindergarten through 12th grade courses (except special education, regional occupational program courses and ROTC) that are not accessible to English Language Learners because the certified teacher does not possess an EL Certification for the 2011-2012 school year, as follows:

<b>POSITION/ AREA OF SERVICE:</b>	<b>FTE</b>
Math / Non-EL Authorized	2.0
English / Non-EL Authorized	3.0
Art & EEIP Art / Non- EL Authorized	0
Physical Education / Non-EL Authorized	1.0
Social Science/ Non-EL Authorized	0
Spanish/ Non-EL Authorized	1.0
French/ Non-EL Authorized	2.0
Science/ Non-EL Authorized	1.0
Alternative Education/ Non-EL Authorized	1.0
Multi-subject/ Non-EL Authorized	1.0
<b>TOTAL FTE Reduction of Non-EL Courses</b>	<b><u>12.0</u></b>

5. On or before March 15, 2010, the district gave written notice to respondents of the recommendation that their services will not be required for the 2011-2012 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

6. Respondents filed timely requests for hearing to determine if there is cause for terminating their services for the 2011-2012 school year. An accusation was served on respondents, all of whom filed or are deemed to have filed timely notices of defense. All prehearing jurisdictional requirements have been met.

### *Stipulations*

7. The district and the represented respondents reached stipulations on various matters, including prehearing jurisdictional matters, the rescission of certain layoff notices, the proper seniority dates of certain employees, and the reemployment rights of certain employees. Those stipulations are set out in Exhibit 12. (Exhibit 12 is a hearing exhibit; no exhibits are attached to this proposed decision.)

8. At hearing, it was stipulated that respondent Jessie McGee's seniority date is July 14, 1980, and that the district would rescind the layoff notice it issued to McGee.

9. At hearing, it was stipulated that the district would rescind the layoff notice it issued to respondent Marla Winston.

### *Reductions in French*

10. Respondent Patrick Drovin teaches French at Skyline High School. He urges the governing board to reconsider the proposed reductions in high school French, which would be devastating to the foreign language program and its students.

### *Seniority date issue*

11. This is respondent Irene Kim's first year as a district teacher. Her assigned seniority date is August 30, 2010, the first day she rendered paid service under her teaching contract with the district. Kim argues that her seniority date should be August 23, the date she first attended professional development sessions. Kim was hired by the district on August 19, 2010, and required to attend professional development sessions before the school year started, from August 23 to August 27. She was paid a stipend for working those days which was not part of her teaching salary.

Seniority is measured from the first date on which an employee renders paid service in a probationary position. (Ed. Code, § 44845.) Even if attendance at the August training was mandatory, it was not part of Kim's service in a probationary position. Her teaching contract began on August 30, not August 23, and she was paid a stipend for attending the professional development sessions, not her salary as a probationary employee. Kim is not entitled to an earlier seniority date.

### *Other matters*

12. The cause for the reduction in particular kinds of services relates to the welfare of the schools and the pupils thereof.

13. No permanent employee is being terminated while any probationary employee, or any other employee with less seniority, is being retained to render a service which the permanent employee is certificated and competent to render.

## LEGAL CONCLUSIONS

1. Cause exists to direct the district to correct its records to reflect that the seniority date of respondent Jessie McGee is July 14, 1980, and to dismiss the accusation against her. (Finding 8.)

2. Cause exists to dismiss the accusation against Marla Winston. (Finding 9.)

3. Cause exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 44955 to give notice to the remaining respondents that their services will not be required for the 2011-2012 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

## ORDER

1. The district shall correct its records to reflect that the seniority date of respondent Jessie McGee is July 14, 1980. The accusation against McGee is dismissed.
2. The accusation against respondent Marla Winston is dismissed.
3. Notice may be given to the remaining respondents that their services will not be required for the 2011-2012 school year because of the reduction or elimination of particular kinds of services.

DATED: \_\_\_\_\_

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DAVID L. BENJAMIN  
Administrative Law Judge  
Office of Administrative Hearings

## Appendix A

ALEXANDER, CAROLYN  
ALTMAN, NANCY  
BIAGINI, JOANN  
BLOCK, JENNIFER  
BOBINO, JAVERTE  
CAMERON, JAN  
CAMPBELL-UTHMAN, RACHEL  
CARPENTER, VICTORIA  
CHALALE, YITZHAK  
CHIN, CAROLYN  
CLARK, DEBRA  
CURTIS, DON  
DAVIS, BENJAMIN  
DROVIN, PATRICK  
EINAUDI, MARIA  
ESPINOSA, TERESA  
FLIPPIN, MITTIE  
FLORES, JUDITH  
FLOREZ, ARMANDO  
FORTH, JOLIVIA  
HAIDER, LAIMA  
HALLAMAN, PAUL  
HARRIS, DAVID  
HATCH, ANNIE  
HUDSON, GAYLYNNE  
JACKSON, PATRICIA  
KIM, IRENE

KIMBALL, JUSTIN  
KNEBELMAN, JAMES  
KNOX, BARBARA  
KRUZE, ANN  
KUCHERA, CATHRINE  
KWONG, WING-MING  
LUDLUM, SUZANNE  
LUTZENBERGER, JENNIFER  
MAGDALENO, LILEA  
MCCARTIN, JENNIFER  
MESA MAESTRE, JAVIER  
MURRAY, MILES  
PHILIPS, ALICE  
ROTHSTEIN, BRIAN  
RUGGIERO, KATHRYN  
SCHMOOKLER, BENJAMIN  
SCHNEIDER, MARY  
SCHOEN, MARY  
TALKINGTON, JODY  
TODD, KAREN  
VILES, LAWRENCE  
WAN, JESSICA  
WEBB, TONIESHA  
WILLIAMS, SYLVIA  
WOLFE, MARYELLEN  
WOODRUFF, REBECCA  
YOUNG, WILLIAM